

Tuesday, August 14, 2007

The Board met at its offices at 450 N Street, Sacramento, at 12:15 p.m., Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Ruth Ann Hill, 334881

2005, \$347.50

For Claimant:

Sam Norden, Representative

For Franchise Tax Board:

Lisa Lawson, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant was “disabled” for purposes of the Homeowners and Renters Property Tax Assistance law during the year at issue.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and duly carried, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Mandel voting no, the Board reversed the action of the Franchise Tax Board.

SPECIAL TAXES APPEALS HEARING

Chevron USA, Inc., 165308, 215016, 260466, 260468, 306293, 346981 (MT)

1999, \$1,873,518.73 Fee Assessment

2001, \$2,963,128.46 Fee Assessment

2002, \$3,325,960.52 Fee Assessment

2003, \$3,023,600.47 Fee Assessment

2004, \$3,083,899.96 Fee Assessment

2005, \$3,191,890.79 Fee Assessment

For Petitioner:

David Retz, Representative

Joseph Vinatieri, Representative

For Department of Health Services:

Tim Ford, Representative

For Property and Special Taxes Department:

Carolee Johnstone, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether the regulations adopted by DHS to implement the CLPPA are invalid.

Whether DHS improperly increased petitioner’s fee assessments for the 2001 and thereafter through its use of “market share” assessment methodology.

Whether DHS improperly included seven years of inflation increases to the CLPPA fee assessment for the year 2001 and thereafter.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petitions be submitted for decision.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Nilo A. Sarmiento, 339859

1998, \$5,355.21 Claim for Refund

2000, \$1,607.00 Claim for Refund

For Appellant:

Farhad Asghar, Representative

Nilo A. Sarmiento, Taxpayer

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant's claims for refund are barred by the statute of limitations.

Respondent's Exhibit: Miscellaneous Documents (Exhibit 8.1)

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

The Board recessed at 2:05 p.m. and reconvened at 2:40 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Boyd Holdings, 362328

1999, \$101,587.00 Claim for Refund

2000, \$154,708.00 Claim for Refund

2002, \$30,553.00 Claim for Refund

For Appellant:

Kurt Wetzel, Vice-President & CFO

Jeremy Fingeret, Representative

For Franchise Tax Board:

Jason Riley, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has demonstrated that it is entitled to the research and development tax credit under Revenue and Taxation Code section 23609 for the tax years at issue.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 8.2)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 8.3)

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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Jessica McClintock, 304497

1998, \$46,661.00 Claim for Refund

1999, \$61,457.00 Claim for Refund

2000, \$75,233.00 Claim for Refund

2001, \$53,144.00 Claim for Refund

Jessica McClintock, Inc., 304512

1998, \$15,554.00 Claim for Refund

1999, \$20,486.00 Claim for Refund

2000, \$25,078.00 Claim for Refund

2001, \$17,715.00 Claim for Refund

For Appellant:

Marty Dakessian, Representative

Jon Sperring, Representative

LaShelle Wilson, Representative

Ann Hodges, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have demonstrated that they are entitled to the Enterprise Zone Hiring Credit with respect to sixteen employees.

Appellant's Exhibit: Spreadsheets Detailing the Hiring Credits at Issue (Exhibit 8.4)

Respondent's Exhibit: Schedule of Credit Amounts at Issue (Exhibit 8.5)

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

Brent C. Welling and Viki Lee Welling, 348029

1998, \$188,585.00 Tax, \$47,146.00 Failure to File Penalty, \$47,146.00 Notice and Demand Penalty

1999, \$39,636.00 Tax, \$9,909.00 Failure to File Penalty, \$9,909.00 Notice and Demand Penalty

2000, \$192,559.00 Tax, \$46,140.00 Failure to File Penalty, \$46,140.00 Notice and Demand Penalty

For Appellant:

Brent Welling, Taxpayer

Viki Welling, Taxpayer

Minna C. Yang, Attorney

John Penfield, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants were California residents during the years at issue.

Whether appellants had a California filing requirement and, if so, whether there was reasonable cause for appellants' failure to file timely California returns.

Whether appellants complied with respondent's demands for information and, if not, whether there was reasonable cause for their failure to do so.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 8.6)

Action: The Board granted the appellants' request for postponement and requested additional information.

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SALES AND USE TAX APPEALS HEARING

Jatinder S. Dang and Surjit K. Dang, 134012 (KH)

4-1-99 to 3-31-00, \$7,924.24 Tax, \$797.15 Negligence Penalty

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the understated taxable sales are excessive.
Whether petitioners are negligent.

Joseph D. Young, Chief, Headquarters Operations, Sales and Use Tax Department, stated for the record that based on the Department's concession to delete the negligence penalty, the parties are in agreement and the Appeal Division has revised its recommendation accordingly.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

SPECIAL TAXES APPEALS HEARING

Tesoro Refining, Marketing & Supply Company, 215826, 259337, 305762 (MT)

2002, \$614,727.67 Fee

2003, \$558,843.34 Fee

2004, \$569,988.32 Fee

For Petitioner:

Greg Turner, Attorney

John C. Moore, CPA

Eric J. Miethke, Attorney

For Department of Health Services

Tim Ford, Representative

For Property and Special Taxes Department:

Carolee Johnstone, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the regulations promulgated by the Department of Health Services (DHS) to implement the Childhood Lead Poisoning Prevention Act (CLPPA) are valid.

Whether petitioner's current ownership and operation of a petroleum refinery renders it historically associated with a former owner of the refinery, such that petitioner is liable for CLPPA fees applicable to gallons of MVF previously distributed from the refinery by the former owner of the refinery.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petitions be submitted for decision.

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SALES AND USE TAX APPEALS HEARING

Ms. Mandel left the Boardroom and Mr. Chivaro entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Household Retail Service, Inc., 103973 (OHA)

10-1-97 to 9-30-99, \$9,158,743.00 Claim for Refund

For Claimant: Peter Larsen, Attorney

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether claimant is entitled to additional refund for bad debts incurred from loans originating prior to October 1, 1999, under various private label credit cards.

Action: Upon motion of Ms. Chu, seconded by Mr. Chivaro and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Mr. Chivaro voting yes, the Board ordered that the claim be submitted for decision.

Mr. Chivaro left the Boardroom and Ms. Mandel entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD AUGUST 14, 2007

Nilo A. Sarmiento, 339859

Final Action: Ms. Steel moved that the action of the Franchise Tax Board be reversed as to the year 1998 and sustain as to the year 2000. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

: Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Boyd Holdings, 362328

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Patrick Ryan, 336567

2003, \$10,234.00 Tax, \$5,117.00 Late Filing and Notice and Demand Penalties

For Appellant: No Appearance

For Franchise Tax Board: Dennis Haase, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether appellant has demonstrated error in the proposed assessment.

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Whether there is reasonable cause for appellant's failure to file a timely return and failure to file or provide information upon respondent's notice and demand.

Whether the Board should impose a frivolous appeal penalty.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

**FINAL ACTION ON SPECIAL TAXES APPEALS HEARINGS HELD
AUGUST 14, 2007**

Chevron USA, Inc., 165308, 215016, 260466, 260468, 306293, 346981 (MT)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petitions be redetermined as recommended by the Appeals Division.

Tesoro Refining, Marketing & Supply Company, 215826, 259337, 305762 (MT)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petitions be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD AUGUST 14,
2007**

Ms. Mandel left the Boardroom and Mr. Chivaro entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

Household Retail Service, Inc., 103973 (OHA)

Final Action: Ms. Chu moved that the claim be denied as recommended by the Appeals Division. The motion was seconded by Mr. Chivaro. Mr. Leonard made a substitute motion to grant the claim for refund for the original purchase only. The substitute motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Mr. Chivaro voting no.

Upon motion of Ms. Chu, seconded by Mr. Chivaro and duly carried, Ms. Yee, Ms. Chu and Mr. Chivaro voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the claim be denied as recommended by the Appeals Division.

Mr. Chivaro left the Boardroom and Ms. Mandel entered on behalf of Mr. Chiang in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

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Craig Jennings Enterprises, Inc., 270605 (EA)

1-1-00 to 9-30-03, \$23,312.50 Tax

Action: Redetermine as recommended by the Appeals Division.

Pamela Sue Barber, 316052 (AR)

Bruce A. Barber, 316053 (AR)

4-1-99 to 9-15-00, \$9,056.01 Tax, \$1,630.00 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

All-Terrain Exploration Drilling, 334424 (KH)

1-1-02 to 2-28-05, \$22,819.81 Tax

Action: Redetermine as recommended by the Appeals Division.

Mohamad Abdul Aoun, 295973 (KH)

7-1-00 to 6-30-03, \$18,759.73 Tax

Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following matter: *Daniel Ebenezer and Padmini Ebenezer, 340164.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Daniel Ebenezer and Padmini Ebenezer, 340164

2001, \$10,674.00 Claim for Refund

2002, \$27,864.00 Claim for Refund

Action: The Board took no action.

Patrice Gaspard, 342391

1993, \$143.23 Claim for Refund

1994, \$301.28 Claim for Refund

1996, \$310.25 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Yvonne Ryzak, 350402

2001, \$12,134.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

John S. Ballard, 339524

2003, \$8,428.00 Tax, \$4,214.00 Late Filing and Notice and Demand Penalties

Action: Deny the petition for rehearing.

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Rick Burningham, 330830

2003, \$2,210.00 Assessment, \$553.50 Failure to File Penalty, \$635.00 Notice and Demand Penalty

Action: Deny the petition for rehearing.

Tennison Dong, 339976

2003, \$4,288.00 Tax, \$2,144.00 Penalties, \$90.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Andrea Erickson, 330530

2002, \$1,699.00 Tax

Action: Deny the petition for rehearing.

Robert Frankson, 316456

2002, \$4,825.00 Tax, \$2,412.50 Penalties, \$90.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Patrick E. Galvin, 333157

2003, \$452.00 Tax, \$680.50 Penalties, \$90.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Carol Grant, 328920

2003, \$2,168.00 Tax, \$1,084.00 Penalties

Action: Deny the petition for rehearing.

Richard Grant, 335775

2003, \$1,526.00 Tax, \$763.00 Penalties

Action: Deny the petition for rehearing.

Charles A. Harris, 328928

2003, \$3,328.00 Assessment, \$832.00 Late Filing Penalty

Action: Deny the petition for rehearing.

Byron Hoffman, 327674, 339738

2002, \$6,364.00 Tax, \$1,591.00 Late-Filing Penalty

2003, \$5,479.00 Tax, \$2,739.50 Penalties, \$90.00 Enforcement Fee

Action: Deny the petition for rehearing.

Jackie Krienke, 337077

2002, \$877.00 Tax, \$438.50 Penalties, \$90.00 Enforcement Fee

Action: Deny the petition for rehearing.

Anthony Long, 343666

2001, \$2,398.00 Assessment

Action: Deny the petition for rehearing.

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Elizabeth Magness, 343250

2003, \$129.00 Tax, \$280.00 Penalties, \$120.00 Enforcement Fee

Action: Deny the petition for rehearing.

John Marshall, 216967

1995, \$68,003.00 Assessment

1996, \$64,786.00 Assessment

G.M.S., 221190

1995, \$169,013.00 Assessment

1996, \$183,010.00 Assessment

Action: Deny the petition for rehearing.

Steven Nicholas, 340536

2003, \$10,103.00 Tax, \$5,051.50 Penalties, \$90.00 Enforcement Fee

Action: Deny the petition for rehearing.

Anthony Oropeza, 333238

2003, \$5,565.00 Tax, \$1,391.25 Late Filing Penalty

Action: Deny the petition for rehearing.

Jim Robertson, 342187

1998, \$14,538.00 Tax, \$7,019.00 Penalties

Action: Deny the petition for rehearing.

Roger Romero, 342029

2003, \$4,633.00 Tax, 1,158.25 Late Filing Penalty

Action: Deny the petition for rehearing.

George A. Saffas, 333072

2002, \$4,962.00 Tax, \$2,779.00 Penalties, \$90.00 Filing Enforcement Fee

Action: Deny the petition for rehearing.

Gregory Stover, 341967

2003, \$1,353.00 Tax, \$681.75 Penalties

Action: Deny the petition for rehearing.

Alice S. Willis, 333059

2000, \$2,811.00 Tax, \$702.75 Late Filing Penalty

Action: Deny the petition for rehearing.

Richard Wood, 339841

2003, \$384.00 Tax, \$196.00 Penalties

Action: Deny the petition for rehearing.

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HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Emilia Aldama, 382352

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Emerenciana Avenir, 373022

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Gesele L. Bailey, 357372

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Wei-Tsang Chen, 378590

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Nemesio S. De Leon, 374348

2006, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Yvonne M. Erwing-Davis, 335908

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Christopher Fusick, 357418

2003, \$347.00

2004, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Lyslie Ann Gray, 378769

2006, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Alfred G. Green, 374376

2006, \$305.00

Action: Sustain the action of the Franchise Tax Board.

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Epifania A. Grio, 378392

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Gerardo De Guzman, 377435

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Maryam Hoell, 378577

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Suzan Hovhanissyan, 374615

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Soon Y. Kim, 374352

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Tahirih Lowe, 378354

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

George L. Mercado, 377365

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Rose Nassif, 373187

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Luther Pittman, 372968

2006, \$332.50

Action: Sustain the action of the Franchise Tax Board.

Mariguita P. Reposar, 377220

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Richard Rios, 363039

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Hazel M. Simon, 374331

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Pamela Whitaker, 345093

2005, \$400.00

Action: Sustain the action of the Franchise Tax Board.

Shirley Williams, 374542

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Wilford Williams, Jr., 372937

2006, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Frank Valdez, 372836

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF
PENALTIES/INTEREST AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

The Board deferred consideration of the following matter: *Mentor Corporation*,
334785.

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties/Interest and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

The J. Paul Getty Trust, 241718 (AS)

7-1-98 to 6-30-01, \$74,893.73

Action: Approve the redetermination as recommended by staff.

California Steel Industries, Inc., 258551, (EH)

1-1-99 to 12-31-01, \$110,895.56

Action: Approve the redetermination as recommended by staff.

Mentor Corporation, 334785 (GH)

4-1-00 to 12-31-03, \$67,721.92

Action: The Board deferred consideration of this matter.

Fiserv Cir, Inc., 360218 (OHA)

1-1-02 to 12-31-04, \$68,436.59

Action: Approve the redetermination as recommended by staff.

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Ivy Hill Corporation, 300415 (OHB)

7-1-99 to 6-30-02, \$753,976.76

Action: Approve the redetermination as recommended by staff.

Excelon Corporation, 133994 (OHB)

4-1-97 to 6-30-00, \$999,750.45

Action: Approve the redetermination as recommended by staff.

A T Cross Company, 353093 (OHB)

4-1-95 to 12-31-04, \$116,290.27

Action: Approve the redetermination as recommended by staff.

Alto-Sham, Inc., 360248 (OHA)

1-1-02 to 12-31-04, \$100,623.90

Action: Approve the redetermination as recommended by staff.

Morgan Stanley Capital Group, Inc., 400777 (OHB)

10-1-06 to 12-31-06, \$83,108.50

Action: Approve the relief of penalty/interest as recommended by staff.

Avaya, Inc., 400773 (OHB)

10-1-00 to 9-30-03, \$82,587.15

Action: Approve the relief of penalty/interest as recommended by staff.

Urban Outfitters West, LLC, 400774 (OHB)

7-1-06 to 9-30-06, \$172,044.24

Action: Approve the relief of penalty/interest as recommended by staff.

New Tangram, LLC, 400779 (AA)

10-1-06 to 12-31-06, \$69,813.80

Action: Approve the relief of penalty/interest as recommended by staff.

Jones Retail Corporation, 402386 (OHB)

1-1-06 to 6-30-06, \$129,771.10

Action: Approve the relief of penalty/interest as recommended by staff.

Digi-Key Corporation, 401264 (OHA)

10-1-00 to 9-30-06, \$209,459.59

Action: Approve the relief of penalty/interest as recommended by staff.

Andre Bonini Barbosa, 360931 (EAA)

10-1-05 to 3-31-06, \$60,253.00

Action: Approve the denial of claim for refund as recommended by staff.

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SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

The Board deferred consideration of the following matter: *Pictometry International Corporation, 402876.*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Hewlett-Packard Company, 361078*; and, *Northrop Grumman Systems Corporation, 391926*, the Board made the following orders:

Norman David Stark, 402374 (EHC)

4-1-03 to 10-19-03, \$398,127.04

Action: Approve the credit and cancellation as recommended by staff.

Walter E. Rosenkranz, 398661 (UT)

11-30-04 to 11-30-04, \$471,058.05

Action: Approve the credit and cancellation as recommended by staff.

Final Film, 300202 (AS)

10-1-01 to 12-31-05, \$845,013.82

Action: Approve the refund as recommended by staff.

PRG (California), Inc., 401691 (AC)

7-1-02 to 9-30-06, \$106,633.44

Action: Approve the refund as recommended by staff.

Putzmeister, Inc., 390989 (OHA)

10-1-05 to 12-31-05, \$97,897.61

Action: Approve the refund as recommended by staff.

El Monte Automotive Group, Inc., 400220 (AP)

1-1-04 to 12-31-06, \$125,198.84

Action: Approve the refund as recommended by staff.

Regents of the University of California, 261076 (AS)

1-1-01 to 12-31-04, \$876,837.04

Action: Approve the refund as recommended by staff.

Southern California Graphics Corporation, 341251 (AS)

10-1-02 to 12-31-05, \$168,502.26

Action: Approve the refund as recommended by staff.

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Marketing Drive S.F., Inc., 332380 (BH)

7-1-02 to 3-31-05, \$537,801.88

Action: Approve the refund as recommended by staff.

La Habra Fence Company, Inc., 400561 (EA)

10-1-03 to 9-30-06, \$87,296.00

Action: Approve the refund as recommended by staff.

Applied Materials, Inc., 400443 (OHC)

1-1-02 to 12-31-04, \$70,326.62

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 382763 (KH)

4-1-06 to 9-30-06, \$601,949.69

Action: Approve the refund as recommended by staff.

Cook Incorporated, 217777 (OHA)

1-1-99 to 12-31-03, \$101,948.25

Action: Approve the refund as recommended by staff.

Cerner Corporation, 332524 (OHA)

7-1-02 to 9-30-05, \$288,336.86

Action: Approve the refund as recommended by staff.

Smurfit-Stone Contr Entrprs., Inc., 383621 (AA)

1-1-06 to 9-30-06, \$55,871.27

Action: Approve the refund as recommended by staff.

Canon Financial Services, Inc., 372004 (OHB)

4-1-04 to 6-30-06, \$64,474.28

Action: Approve the refund as recommended by staff.

Video Art Studios, Inc., 402919 (UT)

11-28-98 to 11-28-98, \$111,662.64

Action: Approve the refund as recommended by staff.

Downs Energy, 394816 (EH)

1-1-06 to 3-31-06, \$104,972.94

Action: Approve the refund as recommended by staff.

AP/APH Palm Springs, L.P., 345142 (EHC)

7-1-05 to 7-11-05, \$197,118.42

Action: Approve the refund as recommended by staff.

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Pacific Bell Leasing Company, 402215 (OHC)

9-1-00 to 6-30-02, \$14,922,435.69

Action: Approve the refund as recommended by staff.

Dow Agrosciences, LLC, 399488 (OHA)

1-1-02 to 12-31-04, \$442,820.37

Action: Approve the refund as recommended by staff.

The Campo Band of Mission Indians, 334701 (FH)

7-1-03 to 6-30-06, \$107,762.67

Action: Approve the refund as recommended by staff.

Pictometry International Corporation, 402876 (OHB)

7-1-06 to 9-30-06, \$107,696.12

Action: The Board deferred consideration of this matter.

Hewlett-Packard Company, 361078 (OH)

1-1-01 to 12-31-03, \$1,183,865.58

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Northrop Grumman Systems Corporation, 391926 (AS)

7-1-05 to 3-31-06, \$148,996.15

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Nalco Company, 400173 (OHA)

1-1-00 to 12-31-02, \$214,019.59

Action: Approve the refund as recommended by staff.

Seguin Moreau Napa Cooperage, Inc., 401726 (JHF)

7-1-01 to 6-30-04, \$83,716.46

Action: Approve the refund as recommended by staff.

Quest Diagnostics Incorporated, 345947 (OHB)

1-1-03 to 12-31-03, \$87,796.92

Action: Approve the refund as recommended by staff.

All Good Pallets, Inc., 399490 (CH)

1-1-04 to 6-30-05, \$60,416.11

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 379586 (OHC)

7-1-06 to 12-31-06, \$2,321,247.35

Action: Approve the refund as recommended by staff.

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Lobel Financial Corporation, 395452 (EA)

10-1-06 to 12-31-06, \$67,591.55

Action: Approve the refund as recommended by staff.

Route 99, Inc., 400472 (EHC)

6-2-03 to 3-31-06, \$61,714.00

Action: Approve the refund as recommended by staff.

Challenge Financial Services, Inc., 372169 (EA)

7-1-05 to 12-31-06, \$191,628.00

Action: Approve the refund as recommended by staff.

South Western FCU, 380351 (EA)

1-1-06 to 12-31-06, \$51,739.36

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Jefferson National Life Insurance Company, 403770 (ET)

1-1-04 to 12-31-05, \$890,944.75

Action: Approve the refund as recommended by staff.

Massachusetts Mutual Life Insurance Company, 404551 (ET)

1-1-05 to 12-31-05, \$1,169,084.57

Action: Approve the refund as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

Robert Warren Rosenbaum, 331543 (KHO)

1-1-00 to 12-31-02, \$66,909.13 Tax

Considered by the Board: January 31, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition for rehearing be denied as recommended by the Appeals Division.

Fassel Mahmoud Elder, 197550 (KH)

10-1-98 to 2-28-02, \$137,439.80 Tax, \$14,306.75 Negligence Penalty

Considered by the Board: March 20, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition for rehearing be denied as recommended by the Appeals Division.

The Board recessed at 6:00 p.m. and reconvened at 6:15 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CHIEF COUNSEL MATTERS

RULEMAKING

Request for Re-Adoption of Property Tax Rule 474, Petroleum Refining Properties

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the request for re-adoption of Property Tax Rule 474, *Petroleum Refining Properties*. Proposed Rule 474 clarifies the requirements under Article XIII, section 1, and Article XIII A, section 2, of the California Constitution for the valuation of real property, personal property, and fixtures used to refine petroleum. (Exhibit 8.7.)

Jerry Stanly provided a spreadsheet for the record (Exhibit 8.8).

Speakers: Richard J. Ayoob, Ajalat, Polley, Ayoob and Matarese
Wayne Lewoczko, ExxonMobil Corporation
Cris K. O'Neill, Cahill Davis & O'Neill, LLP, representing Western States
Petroleum Association
Teresa Casazza, California Taxpayers' Association
Kyla Christoffersen, California Chamber of Commerce
Rick Auerbach, Los Angeles County Assessor representing the California
Assessors' Association
Gus Kramer, Contra Costa County Assessor

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board re-adopted Rule 474 as recommended by staff.

Request for Authorization to Publish Amendment to Sales and Use Tax Regulation 1699, Permits

David H. Levine, Tax Counsel, Legal Department, made introductory remarks regarding the request for authorization to publish amendment to Sales and Use Tax Regulation 1699, *Permits*, to clarify subdivision (f), *Inactive Permits*. (Exhibit 8.9.)

Action: Upon motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board authorized publishing amendment to Regulation 1699 as recommended by staff.

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OTHER CHIEF COUNSEL MATTERS**Cooperation with Native American Tribes – Taxation of Cigarettes & Tobacco Products**

Randy Ferris, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the cooperation with Native American Tribes – taxation of cigarettes & tobacco products and began a discussion of promoting a cooperative approach to facilitate tax compliance and diligent enforcement of California's responsibilities under the Master Settlement Agreement. (Exhibit 8.10.)

Ms. Yee directed staff to report to the Board the progress of the discussions on this matter.

Application of Tire Recycling Fee to Tires on Demonstrator Vehicles

Randy Ferris, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks to begin a discussion of adjustments to previous advice regarding the application of the tire recycling fee to tires on demonstrator vehicles. (Exhibit 8.11.)

Speakers: Peter Welch, California Motor Car Dealers Association
Jonathan Morrison, California Motor Car Dealers Association

Report on Life Estates: Property Tax Rule 462.060, Change In Ownership - Life Estates and Estates for Years

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the report on life estates: Property Tax Rule 462.060, *Change In Ownership - Life Estates And Estates For Years*, and reported the results of the informal county survey. (Exhibit 8.12.)

Mr. Leonard requested staff provide information regarding Life Estates that were reassessed and reverted back to the original owner or family with respect to those paid for with money and those gifted.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

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Action: Adopt the following resolution extending its best wishes on his retirement and its appreciation for his service to the State Board of Equalization and the State of California (Exhibit 8.13).

Keith M. LeDuff, Associate Tax Auditor, Sales and Use Tax Department,
Culver City District Office

Action: Approve the Board Meeting Minutes of June 19-21 and July 17, 2007.

Action: Approve proposed revisions to Audit Manual Chapter 1, *General Information* (Exhibit 8.14).

Action: Approve proposed revisions to Compliance Policy and Procedures Manual Chapter 7, *Collections* (Exhibit 8.15).

ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS

Legislative Committee

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Legislative Committee report and the actions therein with the reflection of the voting results of each committee action item (Exhibit 8.16).

Committee votes were as follows:

A recommendation of support for SB 87 (Committee on Budget and Fiscal Review) Property Tax: Assessment of Fractionally Owned Aircraft duly passed with Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

A recommendation of support for SB 87 (Committee on Budget and Fiscal Review) Use Tax: Business Property Statements Include Use Tax Information duly passed with Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no.

A recommendation of support for SB 105 (Migden) duly passed with Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

A position to oppose proposed amendments to SB 295 (Cogdill) in present form unanimously passed with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Property Tax Committee

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein with the reflection of the voting results of each committee action item (Exhibit 8.17).

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Committee votes were as follows:

A recommendation to authorize publication of proposed amendments to Property Tax Rules 101 and 171 as presented in Issue Paper 07-009 unanimously passed with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes.

Business Taxes Committee

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report and the actions therein with the reflection of the voting results of each committee action item (Exhibit 8.18).

Committee votes were as follows:

A recommendation to approve Alternative 1, to authorize publication of proposed new regulations 2558, *Distilled Spirits*; 2559, *Presumption – Distilled Spirits*; 2559.1, *Rebuttable Presumption – Distilled Spirits*; 2559.3, *Internet List*; 2559.5, *Correct Classification*; duly passed with Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no.

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, provided a summary report on the feasibility study report for the electronic services expansion project (Exhibit 8.19).

Mr. Hirsig also provided updates on the curtain wall project and the daycare center project (Exhibit 8.20).

Deputy Director's Report

Interagency Agreement Contract Over \$1 Million

David Gau, Acting Deputy Director, Administration Department, made introductory remarks regarding the interagency agreement contract over \$1 million (Exhibit 8.21).

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstaining, the Board approved a renewal of the Department of Technology Services Interagency Agreement for a partial year.

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Fiscal Year 2008/09 Budget Change Proposals

Mr. Gau introduced Randie Henry, Deputy Director, Sales and Use Tax Department, made introductory remarks regarding Fiscal Year 2008/09 Budget Change Proposal (Exhibit 8.22).

Speaker: Michele Pielsticker, General Counsel, representing Cal-Tax, commented on the tax gap budget change proposals.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved Tax Gap BCP No. 1, *In-State Service Businesses*, with changes.

Action: Mr. Leonard moved to refer Tax Gap BCP No. 2, *Individual Consumers*, to the Legislative Committee. The motion failed for lack of a second.

Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved Tax Gap BCP No. 2, *Individual Consumers*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved Tax Gap BCP No. 3, *Internet Sellers*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved Tax Gap BCP No. 4, *Itinerant Vendors*, as recommended by staff.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved Tax Gap BCP No. 5, *Cash Based Businesses*, as recommended by staff.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved Tax Gap BCP No. 6, *Audit Program Improvements*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved Tax Gap BCP No. 7, *Collection Program Improvements*, as recommended by staff.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and duly carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Mandel voting yes, Ms. Steel voting no, the Board approved Tax Gap BCP No. 8, *Expanded Bankruptcy and Out-of-State Collections*, as recommended by staff.

With respect to the additional tax gap proposals, the Board directed staff to provide a list of potential Legislative proposals for consideration at its September meeting.

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Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard voting no, the Board approved *BCP Agricultural Inspection Station Tax Leads* as recommended by staff.

Action: The Board deferred consideration of *BCP Statewide Business License Inspection Program* to the September meeting and requested an evaluation of the pilot program.

Action: Mr. Leonard moved approval of Alternative 2, *BCP Maximize Fairness and Education in County Assessment Standards Program*. The motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved Alternative 1, *BCP Maximize Fairness and Education in County Assessment Standards Program*.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board approved *BCP Cigarette and Tobacco Products Taxes Revenue Recovery*, as recommended by staff.

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved *BCP E-Services Expansion*, as recommended by staff.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved *BCP New Special Taxing Jurisdictions*, as recommended by staff.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved *BPC Improved Taxpayers' Rights/Equal Employment Office Outreach and Services*, as recommended by staff.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 10:00 p.m. and reconvened immediately in closed session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 10:05 p.m. and reconvened immediately in open session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Ramon Hirsig, Executive Director, announced the appointment of Anita Gore to the position of Deputy Director of the new External Affairs Department.

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The Board adjourned at 10:07 p.m.

The foregoing minutes are adopted by the Board on September 11, 2007.

Note: The following matters were removed from the calendar prior to the meeting: *Farmers and Merchants Bank of Long Beach, 359062; J & H Jewelry Mart, Inc., 304042; Stephen Charles Borkenhagen, 302079; Eulipia, Inc., 300130; Los Gatos Restaurants, Inc., 299490; and, Capital One Auto Finance, Inc., 341976.*